
(1994) 02 CAL CK 0020
In the Calcutta High Court
Case No : Suit No. 356 of 1985

Shakuntala Devi Prahladka and Another APPELLANT
Vs
Punjab National Bank RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Citation : 98 CWN 1125

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Judgement

Ajoy Nath Ray, J.—The Suit is filed by the first plaintiff who is the mother of the second in respect of a Joint Savings Bank A/C. opened by them in the Zakaria Street Branch of the defendant bank on or about the 11th of January, 1983. In the said account three several sums were paid in, a sum of Rs. 100/- for opening the account, a sum of Rs. 2,02,800/- being the money paid to the plaintiff by the LIC for the unfortunate demise of the second plaintiffs younger brother and another sum of Rs. 35,208.00.

2. The aggregate amount paid into the account was Rs.2,38,108.00 and it has, at the stage of arguments, been concerned by Mr. M.R. Singla that this principal amount is indubitably payable by the defendant to the plaintiffs.

3. Although such a concession was made at the very end of the suit the defendant Bank had not at any stage paid the money into Court or otherwise seen to it that the plaintiff receive the principal sum without prejudice to the rights and contentions of the defendant as to their points in the suit. Accordingly the grant of interest pendente lite and further interest from 1985 will follow as a matter of course.

4. The parties went to trial on the following issues :-

1. Did the plaintiffs act in collusion and conspiracy with the Branch Manager A.B. Das as alleged in the written statement ?

2. Was a sum of Rs.2 lakh paid by the said A.B. Das to the plaintiffs as alleged in the written statement and if so, did the same extinguish the liability of the Bank.?
 3. To what interest, if any, are the plaintiffs entitled upon the said sum of Rs.2 lakh?
 4. Did the defendant wrongfully and illegally dishonour the cheque for Rs. 31,000/- drawn in favour of Suresh Construction Pvt. Ltd.?
 5. Did the plaintiffs suffer loss of earning/profit to the extent of Rs. 1,80,000/- for the alleged dishonour of the cheque/
 6. Are the plaintiffs entitled to any decree on the admitted sum lying due to their credit in Savings Bank Account?
 7. To what reliefs, if any, are the plaintiffs entitled?
5. Regarding the first issue it appears that the Branch Manager of the defendant bank viz. one A.B. Das caused a fraudulent transfer of Rs.2 lakh to be made from the account of the plaintiffs to the account of one Bhajan Finance. The last document of Ext. "A" which is the Judge's Brief of Documents shows that even according to the Bank such "unauthorised transfer took place on 14.1.83 i.e. almost as soon as the joint account was opened by the plaintiffs.
6. There has been no indication from any of the papers before me or from the evidence of Rabindra Kumar Acharya who was the only witness of the Bank that the plaintiffs or any of them was in any manner connected with the fraud perpetrated by A.B. Das.
7. I have hesitation in answering the first issue in favour of the plaintiff. The allegation in the written statement that the plaintiffs acted along with the Branch Manager A.B. Das was made without any basis or ground whatsoever.
8. It is quite clear, therefore, that the sum of Rs.2 lakh fraudulently removed by A.B. Das to Bhajan Finance could not in any manner extinguish the liability of the Bank to pay the moneys deposited in the Savings Bank Account as and when demanded by the plaintiffs. The second issue need not, therefore, be any further dwelt upon.
9. The plaintiffs drew a cheque upon one Suresh Construction Pvt. Ltd. and the same was twice dishonoured. The amount of the cheque was Rs.31,000/-. The first return of the cheque was made upon the ground that the account number was wrongly quoted in the cheque but the cheque was represented after due correction of the account number.
10. For the second time the cheque was returned dishonoured with the endorsement of the Bank (see page 25 of Ext.A) that the drawer's signature is not in the Bank's record.
11. The said communication of the Bank is dated 14.12.84.

On the 2nd of August, 1983 the fraud of A.B. Das had already produced its results and certain books of the Bank had been seized consequent thereupon. Mr. Singla has submitted that the account papers in regard to the plaintiffs were also seized and that is why the Bank could not compare the drawer's signature. If the same had happened it was only because of the fault of the Bank's own employee that the Bank was suffering. A third party like the plaintiff cannot be made to suffer therefor and they are entitled to insist that if they have come to the Bank and have duly signed a cheque in favour of their customer the cheque shall be duly honoured.

12. Not only was the said cheque dishonoured but the account its(sic) virtually became blocked almost immediately as it was opened because (sic) the fraudulent transfers made therefrom by A.B. Das. The whole su(sic) standing to the credit of the account as mentioned above became blocked in the hands of the defendant Bank and the plaintiffs have not been able to withdraw any money therefrom.

13. Mr. Singla has submitted that even now a certain sum is lying to the credit of the plaintiffs in the said Savings Account, the said sum being approximately Rs. 38,000/- is not (sic)t, in my opinion, to give that figure any weight because it is manipulated by the fraud of the Bank's own employee. I also wholly exonerate the plaintiffs from making any further attempts after 1984 to withdraw any moneys from the said account, first because the Bank was unable to compare any cheques by a self inflicted disability brought upon themselves and secondly because the plaintiffs had serious disputes with the Bank at this stage whether the sum lying to their credit was Rs. 2,40,000/- approx. Or only Rs. 40,000/- approx.

14. The Bank has, therefore, wrongly refused to pay the plaintiffs the said entire principal sum mentioned above.

15. Under these circumstances, what is the interest that can be claimed by the plaintiffs.

Mr. Barin Ghosh appearing for the plaintiffs has drawn my attention to several opposite authorities in this regard. First, he placed the case of Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, He relied upon the following passage :-

The next point canvassed in the Courts below was in respect of the claim of the plaintiff regarding interest on the amount found due to the plaintiff from 5-4-1937 to the date of the suit. It was contended that no interest could be allowed on damages because to do so would amount to awarding damages on damages which is opposed to precedent and principle. Clerk J., however awarded interest by placing reliance on certain English decisions which enunciate the rule that an agent who receives or deals with the money of his principal improperly and in breach of his duty or who refused to pay it over on demand is liable to pay interest from the time when he so receives or deals with the same or from the time of the demand. We think it is well settled that interest is allowed by a court

of Equity in the case of money obtained or retained by fraud. As stated in Art. 423 of Vol. I of Halsbury, the agent must also pay interest in all cases of fraud and on all bribes and secret profits received by him during his agency. Their Lordships of the Privy Council in *Johnson v Rex*, (1994) AC. 817 (D), observed as follows :

In order to guard against any possible misapprehension of their Lordships' views they desire to say that in their opinion there can be no doubt whatever, that money obtained by fraud and retained by fraud can be recovered with interest, whether the proceedings be taken in a Court of Equity, or a Court of law, or in a Court which has jurisdiction both equitable and legal.

16. Mr. Ghosh said that in the instant case also the Bank has kept the plaintiffs out of funds by reason of fraudulent conduct of the Bank's employee for which the Bank must be held to be vicariously responsible. I have no doubt in my mind that Mr. Ghosh is right. The Bank is liable for all unauthorised acts of its employees who are empowered to deal with third parties and must itself face the consequence in relation to such third parties as if the Bank itself had acted deliberately through the employee who was committing the wrongful act or perpetrating the fraud.

17. Furthermore, the relationship between the banker and its customer is not a mere ordinary debtor creditor relationship; The Bank is cast with certain duties and one of those duties is to pay the money from out of the customer's account as and when so directed without any demur or protest, the relationship of banker and customer is an equitable relationship of trust. That is why the Bank cannot disclose the particulars of a customer's account to any and every enquirer but shall keep faith and retain the secret because of the special relationship between the banker and the customer.

18. In my opinion, the above dictum of the Supreme Court applicable in cases of agency is a fortiori applicable in a banker customer relationship and if the Bank, through its, or its employee's fraudulent conduct causes moneys of its customers to be blocked up the Bank shall pay interest even for periods prior to the date of institution of the suit upon equitable grounds.

19. What should the rate of interest be in this case? The evidence shows that the Bank itself gets 18% on unsecured loans and that it claimed such an amount even from Bhajan Finance when it sought to settle the matter with them. In my opinion, the rate of 18% upon the principal sum should run from the date of opening of the account 11/1/83 throughout until payment itself, covering at the same rate the period prior to the suit, the period during which the suit was pending and the subsequent period after judgment until the Bank clears payment.

20. Now come to the last question of what damages, if any, are payable for the dishonoured cheque of Rs. 31,000/-.

21. There is evidence on record that the cheque was issued under the signature

of the second plaintiff in a trading capacity. The second plaintiff said from the box that they have suffered in that their reputation was at stake and they have suffered loss to Rs. 2 lakh. Mr. Singla cross-examined on the line that no particulars of these are given by the plaintiffs.

22. Indeed the attempt to prove special damages to the extent of Rs. 1,80,000/- was given up.

23. What was argued was that in a case of the present nature where a trader's cheque has been unauthorisedly dishonoured by the Bank damages are payable without proof of special damage and in case of traders such damages would be substantial. I need not enter into the question in deciding this case whether in the case of an ordinary withdrawal not involving any trading circumstance the damages would have to be nominal.

24. Mr. Ghosh relied in this respect upon two authorities respectively reported in *Jogendra Nath Chakravarti Vs. New Bengal Bank Ltd.*, and *The New Central Hall, a firm of two partners, Ismail Ibrahim Sully and Another Vs. The United Commercial Bank Ltd. Madurai*, The head note from the Calcutta case is reproduced below :-

Where the Banker, being bound to honour his customer's cheque, has failed to do so, he will be liable to damages. If special damage naturally ensuing from the dishonour is proved, it will be properly taken into account in assessing the amount of the damages. If the customer be a trader, the Court may properly award substantial damages, in the absence of the proof of special damage. In other cases the customer will be entitled to such damages as will reasonably compensate him for the injury which, from the nature of the case, he has sustained. All loss flowing naturally from the dishonour of a cheque may be taken into account in estimating the damages.

25. The two head notes of the Madras case are also set out below :

In an action for damages against a bank by a non-trader customer for dishonour of cheques nominal damages should be awarded where there is no proof of special loss or damage by the wrongful dishonouring, and in the case of a trader, substantial damages should be awarded even in the absence of proof of special loss or damages. Of course, if there is proof of special loss or damage, that will be taken into consideration for arriving at the exact quantum of damages. The Indian law on the subject is not at all different from the English Law on the point, 1920 A.C. 102 1939-3 All E.R. 577 and 1040-1 All E.R. 316, and *Jogendra Nath Chakravarti Vs. New Bengal Bank Ltd.*, Ret. on.

The plaintiff brought a suit for recovery of Rs. 50,000 as damages on the allegation that 11 cheques of the plaintiffs issued to 11 different persons were wrongfully dishonoured by the defendant bank covering a credit amount of about Rs. 4000, and the plaintiffs had to spend Rs. 2519-14-0 as their costs in filing the suit, and a similar amount in preferring this appeal, dishonour to be made

without good or reasonable cause and if it fails to take due care and regard in that respect it must make adequate compensation to the trader. Such compensation should naturally be related to the total amount of the dishonoured cheque and these are the reasons why I have come to the above conclusion about the quantum of general damages payable without proof in these matters.

26. The plaintiffs, will therefore, be entitled to a decree for Rs.2,38,108,00 with interest thereon 18% per annum from 11.1.83 until filing of. suit, pendente lite interest thereon 18% per annum and further interest thereon also 18% per annum. The plaintiffs will be entitled to damages for the dishonoured cheque of Rs. 31,000/- to the extent of Rs. 15,500/- and there shall be a decree for the said sum also. The plaintiffs will be entitled to the costs of this suit assessed at Rs. 25,000/-.

Let the decree be drawn up expeditiously.